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IN THE HIGH COURT OF JUDICATURE AT BOMBAY@@
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CIVIL APPELLATE JURISDICTION@@
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WRIT PETITION NO.2492 OF 2005.@@
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M/s.Deshbhakta Ratanapanna
Kumbhar Panchaganga Sahakari Sakhar
Karkhana Limited ..Petitioner

versus

The Assistant Provident Fund
Commissioner and others ..Respondents

Mr.Amit Sale for the Petitioner

Mr.Suresh Kumar for the Respondent

Coram : S.R.Sathe, J.@@
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Dated : 28th Feb., 2006@@
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1. Heard both the learned Advocates at length.

2. The Petitioner is the sugar factory registered under the provisions of Multi State Co-operative Societies Act. The Respondent No.1, the Assistant Provident Fund Commissioner, Employees Provident Fund Organisation, Kolhapur, issued notice dated 13.12.2004 to the petitioner and called upon them to pay the provident fund and alleged benefits to the workmen for the period December 2003 to May

2004 amounting to Rs.1,01,76,000/- as contribution of the factory. Similar notice was also issued on 13.1.2005 demanding the outstanding amount of Rs.79,61.201/-. The petitioner raised loan from DCC Bank, Kolhapur and paid the amount of Rs.1,81,34,201/-.

3. On 5.1.2005 the respondent No.1 issued another demand notice and claimed amount of damage and interest to the tune of Rs.58,21,980/- and 20,54,279/-. The said notice was based on the order dated 5.1.2005. According to the petitioner the demand notice was not legal and valid. The petitioner, therefore preferred appeal being ATA No.191(9) of 2005 before the EPF Appellate Tribunal at Delhi. The said appeal was admitted and notice was issued to respondent. The petitioner took plea before the Appellate Authority that due to financial difficulties the petitioner could not pay the amount. The appellate authority held that no appeal is maintainable against the order under Section 7-q of the Employees Provident Fund Act and therefore refused to grant stay in respect of the order regarding payment of interest amount. The appellate authority however, stayed the operation of the impugned order regarding the payment of damages on condition that the appellant should deposit 50% of the impugned damages and the entire amount of interest as per section 7-q of the act within six weeks from 2.3.2005.

4. Being aggrieved by the said order the petitioner has filed the present writ petition. The learned Advocate for the petitioner could not point out as to how the order passed by the Appellate Tribunal is improper or illegal. Here again he only made submission that the financial position of the factory is not good and as such it is not possible to deposit the amount of damages and interest as directed by the appellate authority. It is needless to say that the petitioner is in fact under statutory obligation to make the payment of EPF Contribution and other dues. In fact, if such amounts are not paid by the employer then he as to face grave consequences including criminal prosecution. So, under such circumstances, it is very clear that the learned Appellate authority rightly refused to grant stay in respect of interest amount and only granted stay regarding amount of damages on condition that the petitioner should deposit the entire interest amount and 50% of the damages amount. It is also very clear from the order passed by the appellate authority that proper opportunity was given by the said authority to the petition to put forward their case before the

Employees Provident Fund Commissioner as well as before the Appellate Authority.

5. In view of the above, it is clear that the order passed by the EPF Appellate Tribunal is legal and correct. There is absolutely no need to interfere with the said order by exercising power under Article 227 of the Constitution of India. Hence, the petition is rejected.

(S.R.Sathe, J.)